



Citation: *AG v Canada Employment Insurance Commission*, 2025 SST 241

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:

A. G.

Respondent:

Canada Employment Insurance Commission

Decision under appeal:

Canada Employment Insurance Commission
reconsideration decision (702704) dated January 24, 2025
(issued by Service Canada)

Tribunal member:

Bret Edwards

Type of hearing:

Teleconference

Hearing date:

February 25, 2025

Hearing participant:

Appellant

Decision date:

February 28, 2025

File number:

GE-25-365

Decision

[1] The appeal is dismissed.

[2] The Canada Employment Insurance Commission (Commission) didn't make its decision fairly when it refused to give the Appellant more time to ask for a reconsideration.

[3] But the Appellant hasn't met the criteria for an extension of time to ask for a reconsideration.

[4] This means the Appellant can't have more time to ask for a reconsideration. Put another way, it means the Commission doesn't have to accept the Appellant's reconsideration request.

Overview

[5] The Appellant established a claim for Employment Insurance (EI) benefits as of January 8, 2023.¹

[6] On September 21, 2023, the Commission decided that the Appellant isn't entitled to benefits starting March 5, 2023 because she lost her job on March 11, 2023 as a result of her misconduct.²

[7] On November 7, 2024, the Appellant asked the Commission to reconsider the above decision.³

[8] The Commission then decided the Appellant's reconsideration request was late and refused to give her more time to ask for a reconsideration.⁴

[9] The Commission says it didn't give the Appellant more time to ask for a reconsideration because she doesn't have a reasonable explanation for being late, she

¹ GD4-1.

² GD3-14.

³ GD3-17 to GD3-18.

⁴ GD3-23.

hasn't shown that she always intended to dispute that decision, her request doesn't have a reasonable chance of success, and prejudice could be caused to the parties by allowing her more time to ask for a reconsideration.

[10] The Appellant says that she submitted a reconsideration request after she received the Commission's decision, but the Commission never received it. She also had mental health challenges that prevented her from following up sooner. And she ultimately submitted another reconsideration request after finding out that her wages were being garnished to recover the overpayment resulting from the Commission's decision.

Issues

[11] I have to decide whether the Commission should accept the Appellant's reconsideration request. To make this decision, I have to consider several things.

[12] First, I must decide if the Appellant's reconsideration request is late.

[13] If so, I then must decide if the Commission made its decision fairly when it refused to accept the Appellant's late reconsideration request.

[14] If the Commission didn't make its decision fairly, then I can look at all the factors described by the law and make my own decision about whether the Commission should accept the Appellant's late reconsideration request.

Analysis

What the law says

[15] When the Commission makes a decision about your EI benefits, you have a 30-day deadline to ask for a review of the decision. This is called a reconsideration request.⁵

⁵ See section 112(1)(a) of the *Employment Insurance Act* (EI Act).

[16] If you wait more than 30 days to ask for a reconsideration, your request is late. The Commission may decide to give you more time to make your request for reconsideration.⁶

[17] When it looks at a late reconsideration request, the Commission has to ask two questions:

- Do you have a reasonable explanation for being late?
- Have you shown that you always meant to ask for a reconsideration?⁷

[18] When you make a reconsideration request more than a year after you received the decision, the Commission also has to ask:

- Does your request have a reasonable chance of success?
- Would it cause prejudice, or harm, to the Commission or other parties if the Commission reconsidered its decision?⁸

[19] The Commission makes its own decisions about accepting or refusing late reconsideration requests. This is called a discretionary power.⁹

[20] Even though the Commission has discretionary power to accept or refuse a late reconsideration request, the Commission must make its decision fairly.¹⁰ This means it must act in good faith, with proper purpose and motive, take into account any relevant factors, ignore any irrelevant factors, and act in a non-discriminatory manner.¹¹

[21] In other words, the Commission should pay attention to important information about why you were late and ignore things that are not important.

⁶ See section 112(1)(b) of the EI Act.

⁷ See section 1(1) of the *Reconsideration Regulations* (Recon Regulations).

⁸ See section 1(2)(a) of the Recon Regulations.

⁹ The Federal Court of Appeal (Court of Appeal) decided that the Commission's power to refuse or accept a late request was discretionary in *Canada (Attorney General) v Knowler*, A-445-95.

¹⁰ The law refers to this as the Commission exercising its discretion judicially.

¹¹ See *Canada (Attorney General) v Sirois*, A-600-95; *Canada (Attorney General) v Purcell*, A-694-9.

[22] I must respect the Commission's discretionary power. This means I can't change the Commission's decision unless I think it didn't make the decision fairly. If I think the Commission didn't make its decision fairly, then I can step into its role and make the decision whether to give you more time to ask for reconsideration.

[23] I'm going to start by looking at the dates to decide if the Appellant made her reconsideration request late. If it was late, I will then decide if the Commission made its decision fairly when it refused the late reconsideration request. If the Commission didn't make its decision fairly, I will then look at whether the Appellant should be given more time to make her reconsideration request.

Was the Appellant's reconsideration request made late?

[24] Yes. I find the Appellant's reconsideration request was made late. But it was communicated to her on a different day from what the Commission says.

[25] When the Commission makes a decision about your EI benefits, you have 30 days to ask them to review the decision if you don't agree with it. This is called making a reconsideration request.¹²

[26] The 30-day window to make a reconsideration request starts from the time a decision is communicated to you.¹³

[27] The law doesn't explain what it means by "communicated". But case law says that communication of a decision occurs when the person affected by the decision is aware of the substance and effect of the decision.¹⁴ This means they have to know what decision was made and what the impact of that decision is.

¹² See section 112(1) of the EI Act.

¹³ See section 112(1) of the EI Act.

¹⁴ See *Cousins v Canada (Attorney General)*, 2007 FCA 469 and *Peace Hills Trust Co. v Saulteaux First Nation*, 2005 FC 1364.

[28] Case law also says that the burden of proving communication rests with the decision maker.¹⁵ This means it's up to the Commission to prove that the decision was communicated to the Appellant when it says it was.

[29] The Commission says the Appellant was notified about its decision by a letter dated September 21, 2023. It says she also received a notice of debt on September 23, 2023.¹⁶

[30] The Commission also says the Appellant confirmed that she received the Commission's September 21, 2023 decision letter and the debt notice as they were sent to the same address where she lived at the time and continues to live.¹⁷

[31] The Appellant testified that she did receive the Commission's September 21, 2023 decision letter, but not until around Christmas 2023. She was staying at her family's house in another city from September 2023 to November 2023, so she wasn't at her home when the letter arrived. The person looking after her mail while she was gone misplaced the Commission's letter and she didn't find it until she was cleaning later on.

[32] The Appellant also testified that she told the Commission that she did receive the September 21, 2023 decision letter, but not when she received it. She didn't provide this information because she was caught off guard when the agent called her, and she was just trying her best to remember that time and didn't want to say anything inaccurate.

[33] When I look at the evidence, I find, on a balance of probabilities, that the Commission communicated its decision to the Appellant on December 25, 2023.

[34] I find the Appellant to be credible. Her testimony was clear, direct, and detailed. Because of this, I have no reason to doubt her when she says she didn't receive the Commission's letter until around Christmas 2023 because she was away before then and the letter was misplaced in her absence. And I also think it's certainly plausible that

¹⁵ *Bartlett v Canada (Attorney General)*, 2012 FCA 230.

¹⁶ GD4-1 to GD4-2.

¹⁷ GD4-2.

she could have been caught off guard when the Commission agent called her for the reasons she says and forgotten to mention specifically when she received the decision letter.

[35] I also find the Commission's record of its conversation with the Appellant aligns with the Appellant's testimony.

[36] According to the Commission's record, the Commission told the Appellant that it had made a decision related to her dismissal from her job on March 11, 2023 after not being able to contact her. In response, she said she was at her mother's place at the time.¹⁸

[37] In my view, what the Appellant told the Commission matches her testimony. She told the Commission that she was staying with her mother when they tried to contact her prior to making their decision on her claim. And I think it's more likely than not that the Commission would have attempted to contact her shortly before it issued its decision on September 21, 2023 rather than well before then. This means the timeline of events as described in the Commission's record aligns with what the Appellant said at the hearing.

[38] For these reasons, I give more weight to the Appellant's testimony than to the Commission's arguments about when the Appellant received its decision.

[39] Since I give more weight to the Appellant's testimony, I find that the Commission's decision was communicated to her on December 25, 2023. She testified that she only found the decision letter around Christmas 2023, so in my view that is when she first read the letter and became aware of the substance and effect of the decision, especially as I have no reason to doubt her testimony. And for the sake of simplicity, I'm inclined to think she found the letter on Christmas Day itself since she testified that it was around Christmas.

[40] Taken together, I therefore find, on a balance of probabilities, that the Commission communicated its decision to the Appellant on December 25, 2023.

¹⁸ GD3-19.

[41] I note the evidence shows the Appellant then submitted a reconsideration request on November 7, 2024.¹⁹

[42] The Appellant testified that she initially submitted a reconsideration request much earlier than November 7, 2024, specifically shortly after she received the Commission's decision letter. But the Commission never received it, so she must have made a mistake in where she sent it.

[43] I acknowledge the Appellant's testimony. As I'll discuss more below, I give her the benefit of the doubt that she did submit a reconsideration request to the Commission soon after she received the Commission's decision letter, even if it was never received.

[44] But even if I give the Appellant the benefit of the doubt here, I find it doesn't change the fact that there's no evidence to indicate exactly when the Appellant sent that earlier reconsideration request to the Commission. The Commission says it never received an earlier reconsideration request from the Appellant.²⁰ And the Appellant testified that she doesn't have a copy of that reconsideration request and can't remember exactly when she submitted it.

[45] Without any such evidence, I can't determine when exactly the Appellant sent the earlier reconsideration request to the Commission. And this means I also can't determine whether it was late or not.

[46] Since I can't make that finding, I have to look at the available evidence to determine when the Commission actually received a reconsideration request from the Appellant. And I find that evidence clearly shows that the Appellant submitted a reconsideration request to the Commission on November 7, 2024.²¹ Neither of the parties deny this.

¹⁹ GD3-17 to GD3-18.

²⁰ GD4-3.

²¹ GD3-17 to GD3-18.

[47] So, based on the Commission's criteria for reconsideration request submissions, I find the Appellant's reconsideration request was late. She submitted a reconsideration that was received by the Commission on November 7, 2024, which was more than 30 days after the Commission communicated its decision to her on December 25, 2023.

[48] The Commission says the Appellant's reconsideration request was more than one year late because it communicated its decision to her after issuing the decision letter on September 21, 2023 and notice of debt shortly thereafter.²²

[49] I disagree with the Commission. For the reasons above, I find the Appellant's reconsideration request wasn't actually more than one year late. She submitted it on November 7, 2024, which was not more than one year after the Commission communicated its decision to her on December 25, 2023.

[50] Since the Appellant's reconsideration request was not more than one year late, this means she only needs to satisfy the first part of the legal test to extend the time to request a reconsideration.

[51] This means the Appellant needs to meet **two conditions**:

- She has a reasonable explanation for being late.
- She has always meant to ask for a reconsideration.

[52] I will now look at whether the Commission made its decision fairly when it denied the Appellant more time to ask for a reconsideration.

Did the Commission make its decision fairly when it denied the Appellant more time to ask for a reconsideration?

[53] No. I find the Commission didn't make its decision fairly when it denied the Appellant more time to ask for a reconsideration.

[54] As discussed above, the Commission has the discretion to accept or refuse a late reconsideration request, but it must make its decision fairly. This means it must act

²² GD3-21, GD4-3.

in good faith, with proper purpose and motive, take into account any relevant factors, ignore any irrelevant factors, and act in a non-discriminatory manner.²³

[55] The Commission says it made its decision fairly because it considered all of the relevant circumstances when denying the Appellant more time to ask for a reconsideration.²⁴

[56] I disagree with the Commission.

[57] I find the Commission ignored a relevant factor.

[58] More specifically, I find it's more likely than not that the Commission didn't consider part of what the Appellant wrote in her reconsideration request when making its decision.

[59] In her reconsideration request, the Appellant wrote that the Commission's decision was communicated to her on November 6, 2024.²⁵ This was one day before she submitted the reconsideration request.

[60] When I look at the Commission's record of its conversation with the Appellant after she submitted her reconsideration request, I don't see any evidence that it asked her why she wrote that its decision was communicated to her on November 6, 2024. The record doesn't mention this at all.²⁶ And in my view, if the Commission did bring that up with the Appellant, it's reasonable to believe that the record would show that too.

[61] The Appellant testified that she wrote what she did on her reconsideration request because that is when she looked at another letter telling her that her wages were being garnished to recover the overpayment resulting from the Commission's September 21, 2023 decision. She then contacted Service Canada and submitted a

²³ See *Canada (Attorney General) v Sirois*, A-600-95; *Canada (Attorney General) v Purcell*, A-694-9.

²⁴ GD4-4.

²⁵ GD3-17.

²⁶ GD3-19.

reconsideration request. But she might have misunderstood the question and maybe should have just written “December 2023” as an answer instead.

[62] Even if the Appellant wrote the wrong thing, I find that **what she did write** was a relevant factor that the Commission overlooked. The fact that the Appellant wrote that the decision was communicated to her the day before she submitted her reconsideration request was something that was potentially relevant for determining if her request was late and therefore warranted further discussion. But since the Commission didn’t ask her about it, I can only conclude that it ignored that part of her request when it made its decision.

[63] Since the Commission ignored a relevant factor, I find this means it failed to act fairly when it decided not to give the Appellant more time to ask for a reconsideration.

[64] Because of that, I can step into the Commission’s role myself. This means I can look at the same criteria the Commission looked at and make my own decision about whether the Appellant can have more time to ask for a reconsideration.

Can the Appellant have more time to ask for a reconsideration?

[65] No, unfortunately. I find the Appellant can’t have more time to ask for a reconsideration. This is because she doesn’t have a reasonable explanation for the delay.

[66] As discussed above, the Appellant needs to meet two conditions to extend the time to request a reconsideration:

- She has a reasonable explanation for being late.
- She has shown that she always meant to ask for a reconsideration.

[67] The Appellant testified to the following:

- She submitted a reconsideration request soon after she received the Commission’s decision letter.

- But the Commission later told her that it never received that reconsideration request. She had mailed it, so it's possible that she mailed it to the wrong place.
- She never heard back from the Commission after submitting the above reconsideration request.
- She didn't follow up with the Commission until she got a letter in November 2024 telling her that her wages were being garnished to recover the overpayment resulting from the Commission's decision.
- She didn't follow up sooner with the Commission because she had mental health challenges at the time. She was going through a bad breakup and trying to keep a roof over her head and not become homeless like she had in the past.
- She was able to find work sometime between September 2023 and December 2023 and has kept that job to this day without any breaks due to illness.

[68] Based on the Appellant's testimony, I find she doesn't have a reasonable explanation for being late, unfortunately.

[69] On the one hand, I will give the Appellant the benefit of the doubt that she submitted a reconsideration request soon after receiving the Commission's decision letter in late December 2023, even if there's no evidence that the Commission ever received that reconsideration request. I've already found her to be credible, so I believe her when she says that she did that.

[70] However, I find the Appellant's subsequent actions don't show that she has a reasonable explanation for being late with the reconsideration request that the Commission actually received on November 7, 2024.

[71] I find the Appellant didn't follow up with the Commission for almost a year after initially submitting a reconsideration request. I've already found that the Commission communicated its decision to her on December 25, 2023. And she testified that she first followed up with the Commission on November 6, 2024. That is a gap of almost one year.

[72] I also find the Appellant didn't follow up with the Commission until she received a letter telling her that her wages were being garnished to recover the overpayment resulting from the Commission's decision. She confirmed this in her testimony.

[73] Based on these findings, I can't conclude that the Appellant's actions during the delay are reasonable. She waited almost a year to contact the Commission despite not having received any confirmation that it had received the reconsideration request that she says she submitted at Christmas 2023. And she contacted the Commission only once she found out her wages were being garnished. To me, this shows that the Appellant was primarily motivated to follow up with the Commission when she did for financial reasons and not because she wanted to know what had happened with her reconsideration request. Otherwise, it's reasonable to believe that she could and would have followed up much sooner.

[74] I acknowledge the Appellant testified that she didn't follow up sooner with the Commission because she was dealing with mental health challenges at the time.

[75] I believe the Appellant when she says she had mental health challenges at the time. I have no reason to doubt her testimony.

[76] Even so, I still find the Appellant could have reasonably followed up with the Commission sooner despite her mental health challenges.

[77] I note the Appellant also testified that she was able to find work sometime between September 2023 and December 2023 and has kept that job to this day without any breaks due to illness.

[78] In my view, the fact that the Appellant has confirmed that she was working full-time during the delay shows that she could carry out other daily tasks in spite of her mental health challenges. And since she was able to work, I think she could have also made time to follow up with the Commission sooner than she did, particularly on a day when she wasn't working.

[79] I also don't see any evidence that the Appellant's physical or mental capacity had deteriorated due to her mental health challenges to the point where she was no longer capable of remembering important tasks or coping with daily life during the delay. Since she confirmed that she has been working since the Fall/Winter of 2023, I think this shows she was capable of handling other life responsibilities and therefore should have been capable of following up with the Commission sooner than she did.

[80] In other words, while I sympathize with the Appellant's situation, I find her mental health challenges aren't a reasonable explanation for being late with her reconsideration request. This is because those challenges shouldn't have prevented her from following up with the Commission sooner about the reconsideration request that she had never heard back about after submitting it around Christmas 2023. And this would have led her to discover that the request was never received in the first place and to then take the necessary steps to submit another request.

[81] Taken together, I find the Appellant doesn't have a reasonable explanation for the delay in making her request for reconsideration.

[82] Since the Appellant doesn't have a reasonable explanation for the delay in making her request for reconsideration, this means she doesn't meet the first condition for extending the time to request a reconsideration.

[83] And since the Appellant doesn't have a reasonable explanation for the delay, it also means I don't need to decide if she had a continuing intention to request reconsideration. Even if she did have a continuing intention, I find the extension can't be granted because she doesn't have a reasonable explanation for the delay and therefore doesn't meet one of the two conditions she must meet.

[84] As a result, I find the 30-day deadline for requesting reconsideration can't be extended in the Appellant's case. Put another way, she can't have more time to ask for a reconsideration, unfortunately.

[85] The Appellant testified that she is hoping she can have more time to ask for a reconsideration because she disagrees with the Commission's decision to disqualify her

from receiving benefits as a result of her misconduct and wants a chance to discuss it again with the Commission.

[86] I acknowledge the Appellant's testimony and understand that this isn't the outcome she hoped for.

[87] But unfortunately, I have to follow the law the way it's written and can't interpret it in a different way.²⁷ This means I can't allow the Appellant's appeal because she hasn't met the criteria to get more time to ask for a reconsideration of the Commission's decision.

[88] The Appellant also testified that she now finds herself in a difficult financial situation because of the Commission's decision and the resulting overpayment.

[89] I sympathize greatly with the Appellant's financial situation and the fact that she won't be able to ask the Commission to take a second look at its decision. But as I've already discussed, I have to follow the law the way it's written. And I can't make an exception for her either, no matter how difficult or compelling I find her circumstances.²⁸

Conclusion

[90] The Commission didn't make its decision fairly when it refused to give the Appellant more time to ask for a reconsideration.

[91] But the Appellant hasn't met the criteria for an extension of time to ask for a reconsideration. She doesn't have a reasonable explanation for the delay.

[92] This means the Appellant can't have more time to ask for a reconsideration.

[93] And it means the appeal is dismissed.

Bret Edwards

Member, General Division – Employment Insurance Section

²⁷ See *Canada (Attorney General) v Knee*, 2011 FCA 301.

²⁸ See *Pannu v Canada (Attorney General)*, 2004 FCA 90.